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CHARLES ELMORE CR
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1936.

No. 716

GREAT LAKES TRANSIT CORPORATION,
Petitioner,

against

INTERSTATE STEAMSHIP COMPANY and ATLANTIC MUTUAL INSURANCE COMPANY, *et al.*, Intervening Underwriters,
Respondents.

BRIEF ON BEHALF OF RESPONDENTS-INTERVENING UNDERWRITERS WITH RESPECT TO PETITION FOR WRIT OF CERTIORARI.

RAY M. STANLEY,
ELLIS H. GIDLEY,
Counsel for Respondents-Intervening Underwriters.

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The petition presents two unrelated questions. These respondents are directly interested only in the second question and limit discussion herein accordingly.

The action is brought to establish liability and cross liability between petitioner's Steamer GEORGE D. DIXON and the Interstate Steamship Company's Steamer WILLIS L. KING for hull and cargo damage arising out of collision. The claim for cargo damage, for the enforcement of which these respondents later intervened, was made by petitioner as carrier and/or

bailee against the Steamer KING and its owner; and the latter then pleaded against petitioner and its Steamer DIXON with respect thereto under the 56th Admiralty Rule. The Court held that both vessels were at fault for the collision and thereupon the question presented by petitioner arose.

These respondents intervened following the determination of mutual fault. The position then asserted and since adhered to by these respondents is that their policies insured cargo; that the payments made thereunder were for cargo's benefit; that they seek to enforce the rights of cargo which they acquired by subrogation; and that, therefore, the KING being at fault, they are entitled to a decree for full damage against that vessel, leaving it to obtain the recoupment allowed by law against the DIXON. This position is based upon the authority of *The New York*, 175 U. S. 187, 209, 210; *The Chattahoochee*, 173 U. S. 540, 554, 555; *Erie Railroad Co. v. Erie & Western Transportation Co.*, 204 U. S. 220, 226; *Aktieselskabet Cuzco v. The Sucarseco*, 294 U. S. 394, 400, 401.

Petitioner contended that the policies of insurance were not cargo policies, but were policies of indemnity insuring its liability as carrier; and petitioner therefore urged that the underwriters acquired no rights of cargo by subrogation; and furthermore that they should not be permitted to recover against the KING because the KING would then be entitled to recoup one-half thereof from the DIXON, which, as petitioner claimed, was the insured under the policies in question.

The Court held that the policies were cargo policies, that the claims prosecuted by these respondents were

cargo claims acquired by subrogation and that full recovery should be had. The Court determined, however, that in view of the fact that both vessels, each of which had been condemned, were before the Court, the form of the decree should be for a moiety of the damage against each with contingent liability of each for the moiety decreed against the other. The effect of the decree is to accomplish the ultimate unavoidable result, namely, requiring each vessel to bear one-half of the damage resulting from the collision—a consequence of the collision plainly to be foreseen. The decree, therefore, has the effect of fixing and enforcing ultimate liabilities of the parties in avoidance of circuity.

These respondents, standing in the shoes of innocent cargo, having the clear right of recovery in full from the non-carrying vessel irrespective of any relationship with the carrying vessel; *The New York, supra; Aktieselskabet Cuzco v. The Sucarseco, supra;* and the non-carrying vessel having the equally clear right of recoupment of one-half thereof from the carrying vessel; *The Chattahoochee, supra,* the decree below obviously accomplishes substantial and direct justice between all the parties.

These respondents appreciate, however, notwithstanding the manifest correctness of the decree of the District Court and of the decision of the Circuit Court of Appeals affirming it, that the question here presented is of such substantial importance to shippers and carriers by water that the final authoritative decision of this Court is desirable, even though the effect be to affirm the decree of the Court below.

If this Court determines to review the matter, it is respectfully submitted that all parties to the action should be retained and brought before the Court so that none may be prejudiced by the absence of another and so that substantial justice between all of them may be assured.

Respectfully submitted,

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ELLIS H. GIDLEY,
Counsel for Respondents-Intervening Underwriters.